



House of Representatives

File No. 795

General Assembly

January Session, 2007

(Reprint of File No. 524)

Substitute House Bill No. 7044
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
May 7, 2007

AN ACT CONCERNING THE DISCLOSURE OF SENSITIVE RECORDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 1-210 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2007*):

3 (a) Except as otherwise provided by any federal law or state statute,
4 all records maintained or kept on file by any public agency, whether or
5 not such records are required by any law or by any rule or regulation,
6 shall be public records and every person shall have the right to (1)
7 inspect such records promptly during regular office or business hours,
8 (2) copy such records in accordance with subsection (g) of section 1-
9 212, or (3) receive a copy of such records in accordance with section 1-
10 212. Any agency rule or regulation, or part thereof, that conflicts with
11 the provisions of this subsection or diminishes or curtails in any way
12 the rights granted by this subsection shall be void. Each such agency
13 shall keep and maintain all public records in its custody at its regular
14 office or place of business in an accessible place and, if there is no such
15 office or place of business, the public records pertaining to such agency

16 shall be kept in the office of the clerk of the political subdivision in
17 which such public agency is located or of the Secretary of the State, as
18 the case may be. Any certified record hereunder attested as a true copy
19 by the clerk, chief or deputy of such agency or by such other person
20 designated or empowered by law to so act, shall be competent
21 evidence in any court of this state of the facts contained therein. Each
22 such agency shall make, keep and maintain a record of the proceedings
23 of its meetings.

24 (b) Nothing in the Freedom of Information Act shall be construed to
25 require disclosure of:

26 (1) Preliminary drafts or notes provided the public agency has
27 determined that the public interest in withholding such documents
28 clearly outweighs the public interest in disclosure;

29 (2) Personnel or medical files and similar files the disclosure of
30 which would constitute an invasion of personal privacy;

31 (3) Records of law enforcement agencies not otherwise available to
32 the public which records were compiled in connection with the
33 detection or investigation of crime, if the disclosure of said records
34 would not be in the public interest because it would result in the
35 disclosure of (A) the identity of informants not otherwise known or the
36 identity of witnesses not otherwise known whose safety would be
37 endangered or who would be subject to threat or intimidation if their
38 identity was made known, (B) signed statements of witnesses, (C)
39 information to be used in a prospective law enforcement action if
40 prejudicial to such action, (D) investigatory techniques not otherwise
41 known to the general public, (E) arrest records of a juvenile, which
42 shall also include any investigatory files, concerning the arrest of such
43 juvenile, compiled for law enforcement purposes, (F) the name and
44 address of the victim of a sexual assault under section 53a-70, 53a-70a,
45 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or
46 impairing of morals under section 53-21, or of an attempt thereof, or
47 (G) uncorroborated allegations subject to destruction pursuant to

48 section 1-216;

49 (4) Records pertaining to strategy and negotiations with respect to
50 pending claims or pending litigation to which the public agency is a
51 party until such litigation or claim has been finally adjudicated or
52 otherwise settled;

53 (5) (A) Trade secrets, which for purposes of the Freedom of
54 Information Act, are defined as information, including formulas,
55 patterns, compilations, programs, devices, methods, techniques,
56 processes, drawings, cost data, or customer lists that (i) derive
57 independent economic value, actual or potential, from not being
58 generally known to, and not being readily ascertainable by proper
59 means by, other persons who can obtain economic value from their
60 disclosure or use, and (ii) are the subject of efforts that are reasonable
61 under the circumstances to maintain secrecy; and

62 (B) Commercial or financial information given in confidence, not
63 required by statute;

64 (6) Test questions, scoring keys and other examination data used to
65 administer a licensing examination, examination for employment or
66 academic examinations;

67 (7) The contents of real estate appraisals, engineering or feasibility
68 estimates and evaluations made for or by an agency relative to the
69 acquisition of property or to prospective public supply and
70 construction contracts, until such time as all of the property has been
71 acquired or all proceedings or transactions have been terminated or
72 abandoned, provided the law of eminent domain shall not be affected
73 by this provision;

74 (8) Statements of personal worth or personal financial data required
75 by a licensing agency and filed by an applicant with such licensing
76 agency to establish the applicant's personal qualification for the
77 license, certificate or permit applied for;

78 (9) Records, reports and statements of strategy or negotiations with
79 respect to collective bargaining;

80 (10) Records, tax returns, reports and statements exempted by
81 federal law or state statutes or communications privileged by the
82 attorney-client relationship;

83 (11) Names or addresses of students enrolled in any public school or
84 college without the consent of each student whose name or address is
85 to be disclosed who is eighteen years of age or older and a parent or
86 guardian of each such student who is younger than eighteen years of
87 age, provided this subdivision shall not be construed as prohibiting the
88 disclosure of the names or addresses of students enrolled in any public
89 school in a regional school district to the board of selectmen or town
90 board of finance, as the case may be, of the town wherein the student
91 resides for the purpose of verifying tuition payments made to such
92 school;

93 (12) Any information obtained by the use of illegal means;

94 (13) Records of an investigation or the name of an employee
95 providing information under the provisions of section 4-61dd;

96 (14) Adoption records and information provided for in sections 45a-
97 746, 45a-750 and 45a-751;

98 (15) Any page of a primary petition, nominating petition,
99 referendum petition or petition for a town meeting submitted under
100 any provision of the general statutes or of any special act, municipal
101 charter or ordinance, until the required processing and certification of
102 such page has been completed by the official or officials charged with
103 such duty after which time disclosure of such page shall be required;

104 (16) Records of complaints, including information compiled in the
105 investigation thereof, brought to a municipal health authority pursuant
106 to chapter 368e or a district department of health pursuant to chapter
107 368f, until such time as the investigation is concluded or thirty days

108 from the date of receipt of the complaint, whichever occurs first;

109 (17) Educational records which are not subject to disclosure under
110 the Family Educational Rights and Privacy Act, 20 USC 1232g;

111 (18) Records, the disclosure of which the Commissioner of
112 Correction, or as it applies to Whiting Forensic Division facilities of the
113 Connecticut Valley Hospital, the Commissioner of Mental Health and
114 Addiction Services, has reasonable grounds to believe may result in a
115 safety risk, including the risk of harm to any person or the risk of an
116 escape from, or a disorder in, a correctional institution or facility under
117 the supervision of the Department of Correction or Whiting Forensic
118 Division facilities. Such records shall include, but are not limited to:

119 (A) Security manuals, including emergency plans contained or
120 referred to in such security manuals;

121 (B) Engineering and architectural drawings of correctional
122 institutions or facilities or Whiting Forensic Division facilities;

123 (C) Operational specifications of security systems utilized by the
124 Department of Correction at any correctional institution or facility or
125 Whiting Forensic Division facilities, except that a general description
126 of any such security system and the cost and quality of such system
127 may be disclosed;

128 (D) Training manuals prepared for correctional institutions and
129 facilities or Whiting Forensic Division facilities that describe, in any
130 manner, security procedures, emergency plans or security equipment;

131 (E) Internal security audits of correctional institutions and facilities
132 or Whiting Forensic Division facilities;

133 (F) Minutes or recordings of staff meetings of the Department of
134 Correction or Whiting Forensic Division facilities, or portions of such
135 minutes or recordings, that contain or reveal information relating to
136 security or other records otherwise exempt from disclosure under this
137 subdivision;

138 (G) Logs or other documents that contain information on the
139 movement or assignment of inmates or staff at correctional institutions
140 or facilities; and

141 (H) Records that contain information on contacts between inmates,
142 as defined in section 18-84, and law enforcement officers;

143 (19) Records when there are reasonable grounds to believe
144 disclosure may result in a safety risk, including the risk of harm to any
145 person, any government-owned or leased institution or facility or any
146 fixture or appurtenance and equipment attached to, or contained in,
147 such institution or facility, except that such records shall be disclosed
148 to a law enforcement agency upon the request of the law enforcement
149 agency. Such reasonable grounds shall be determined (A) (i) by the
150 Commissioner of Public Works, after consultation with the chief
151 executive officer of an executive branch state agency, with respect to
152 records concerning such agency; and (ii) by the Commissioner of
153 Emergency Management and Homeland Security, after consultation
154 with the chief executive officer of a municipal, district or regional
155 agency, with respect to records concerning [any executive branch
156 agency of the state or any municipal, district or regional agency, by the
157 Commissioner of Public Works, after consultation with the chief
158 executive officer of the] such agency; (B) by the Chief Court
159 Administrator with respect to records concerning the Judicial
160 Department; [facilities, by the Chief Court Administrator;] and (C) by
161 the executive director of the Joint Committee on Legislative
162 Management, with respect to records concerning the Legislative
163 Department. [, by the executive director of the Joint Committee on
164 Legislative Management.] As used in this section, "government-owned
165 or leased institution or facility" includes, but is not limited to, an
166 institution or facility owned or leased by a public service company, as
167 defined in section 16-1, a certified telecommunications provider, as
168 defined in section 16-1, a water company, as defined in section 25-32a,
169 or a municipal utility that furnishes electric, gas or water service, but
170 does not include an institution or facility owned or leased by the
171 federal government, and "chief executive officer" includes, but is not

172 limited to, an agency head, department head, executive director or
173 chief executive officer. Such records include, but are not limited to:

174 (i) Security manuals or reports;

175 (ii) Engineering and architectural drawings of government-owned
176 or leased institutions or facilities;

177 (iii) Operational specifications of security systems utilized at any
178 government-owned or leased institution or facility, except that a
179 general description of any such security system and the cost and
180 quality of such system, may be disclosed;

181 (iv) Training manuals prepared for government-owned or leased
182 institutions or facilities that describe, in any manner, security
183 procedures, emergency plans or security equipment;

184 (v) Internal security audits of government-owned or leased
185 institutions or facilities;

186 (vi) Minutes or records of meetings, or portions of such minutes or
187 records, that contain or reveal information relating to security or other
188 records otherwise exempt from disclosure under this subdivision;

189 (vii) Logs or other documents that contain information on the
190 movement or assignment of security personnel; [at government-owned
191 or leased institutions or facilities;]

192 (viii) Emergency plans and emergency [recovery or response plans]
193 preparedness, response, recovery and mitigation plans, including
194 plans provided by a person to a state agency or a local emergency
195 management agency or official; and

196 (ix) With respect to a water company, as defined in section 25-32a,
197 that provides water service: Vulnerability assessments and risk
198 management plans, operational plans, portions of water supply plans
199 submitted pursuant to section 25-32d that contain or reveal
200 information the disclosure of which may result in a security risk to a

201 water company, inspection reports, technical specifications and other
202 materials that depict or specifically describe critical water company
203 operating facilities, collection and distribution systems or sources of
204 supply;

205 (20) Records of standards, procedures, processes, software and
206 codes, not otherwise available to the public, the disclosure of which
207 would compromise the security or integrity of an information
208 technology system;

209 (21) The residential, work or school address of any participant in the
210 address confidentiality program established pursuant to sections 54-
211 240 to 54-240o, inclusive;

212 (22) The electronic mail address of any person that is obtained by
213 the Department of Transportation in connection with the
214 implementation or administration of any plan to inform individuals
215 about significant highway or railway incidents.

216 (c) Whenever a public agency receives a request from any person
217 confined in a correctional institution or facility or a Whiting Forensic
218 Division facility, for disclosure of any public record under the
219 Freedom of Information Act, the public agency shall promptly notify
220 the Commissioner of Correction or the Commissioner of Mental Health
221 and Addiction Services in the case of a person confined in a Whiting
222 Forensic Division facility of such request, in the manner prescribed by
223 the commissioner, before complying with the request as required by
224 the Freedom of Information Act. If the commissioner believes the
225 requested record is exempt from disclosure pursuant to subdivision
226 (18) of subsection (b) of this section, the commissioner may withhold
227 such record from such person when the record is delivered to the
228 person's correctional institution or facility or Whiting Forensic
229 Division facility.

230 (d) Whenever a public agency, except the Judicial Department or
231 Legislative Department, receives a request from any person for
232 disclosure of any records described in subdivision (19) of subsection

233 (b) of this section under the Freedom of Information Act, the public
234 agency shall promptly notify the Commissioner of Public Works or the
235 Commissioner of Emergency Management and Homeland Security, as
236 applicable, of such request, in the manner prescribed by [the] such
237 commissioner, before complying with the request as required by the
238 Freedom of Information Act and for information related to a water
239 company, as defined in section 25-32a, the public agency shall
240 promptly notify the water company before complying with the request
241 as required by the Freedom of Information Act. If the [commissioner]
242 commissioners, after consultation with the chief executive officer of the
243 applicable agency or after consultation with the chief executive officer
244 of the applicable water company for information related to a water
245 company, as defined in section 25-32a, [believes] believe the requested
246 record is exempt from disclosure pursuant to subdivision (19) of
247 subsection (b) of this section, the [commissioner] commissioners may
248 direct the agency to withhold such record from such person. In any
249 appeal brought under the provisions of section 1-206 of the Freedom of
250 Information Act for denial of access to records for any of the reasons
251 described in subdivision (19) of subsection (b) of this section, such
252 appeal shall be against the [Commissioner of Public Works]
253 commissioner of the state agency that issued the directive to withhold
254 such record pursuant to this subsection, exclusively, or, in the case of
255 records concerning Judicial Department facilities, the Chief Court
256 Administrator or, in the case of records concerning the Legislative
257 Department, the executive director of the Joint Committee on
258 Legislative Management.

259 (e) Notwithstanding the provisions of subdivisions (1) and (16) of
260 subsection (b) of this section, disclosure shall be required of:

261 (1) Interagency or intra-agency memoranda or letters, advisory
262 opinions, recommendations or any report comprising part of the
263 process by which governmental decisions and policies are formulated,
264 except disclosure shall not be required of a preliminary draft of a
265 memorandum, prepared by a member of the staff of a public agency,
266 which is subject to revision prior to submission to or discussion among

267 the members of such agency;

268 (2) All records of investigation conducted with respect to any
269 tenement house, lodging house or boarding house as defined in section
270 19a-355, or any nursing home, residential care home or rest home, as
271 defined in section 19a-490, by any municipal building department or
272 housing code inspection department, any local or district health
273 department, or any other department charged with the enforcement of
274 ordinances or laws regulating the erection, construction, alteration,
275 maintenance, sanitation, ventilation or occupancy of such buildings;
276 and

277 (3) The names of firms obtaining bid documents from any state
278 agency.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	1-210

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill exempts the disclosure of certain records under the Freedom of Information Act. The bill narrows the responsibility of the Commissioner of Public Works, and expands the responsibility of the Department of Emergency Management and Homeland Security for the purposes of determining exemptions of certain records. The bill is not anticipated to have a fiscal impact.

House "A" clarifies the language of the underlying bill and has no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 7044 (as amended by House "A")******AN ACT CONCERNING THE DISCLOSURE OF SENSITIVE RECORDS.*****SUMMARY:**

The law exempts certain records from disclosure under the Freedom of Information Act (FOIA), except to law enforcement agencies, if there are reasonable grounds to believe disclosure may result in a safety risk. Under current law, the Department of Public Works (DPW) commissioner determines reasonable grounds for municipal, district, regional, or executive branch agency records, after consulting with the pertinent agency's chief executive officer.

The bill narrows the DPW commissioner's role, requiring him to make the determination for executive branch state agency records after consults with the chief executive officer of the state agency. It requires the Department of Emergency Management and Homeland Security (DEMHS) to make the determination for all other municipal, district, and regional agency records, after consulting with the agency's chief executive officer.

Under current law, agencies must notify the DPW commissioner of FOIA requests, in a manner the commissioner prescribes. The bill requires them to notify the DEMHS commissioner also, as he prescribes. It allows appeals against the DEMHS commissioner, as is currently allowed against the DPW commissioner, and makes conforming changes.

The bill broadens security-related exemptions under FOIA. Current law exempts emergency plans and emergency recovery and response plans from disclosure. The bill specifies that these include emergency

preparedness and mitigation plans, including plans provided by anyone to a state or local emergency management agency or official. The bill also exempts all logs and other documents that contain information on the movement or assignment of security personnel. Current law limits the exemption to logs and other documents at government-owned or leased facilities.

*House Amendment "A" requires the DPW commissioner to determine disclosable records only with regard to executive branch state agencies, instead of state-owned or -leased property under the bill, and restores his duty to consult with agency heads when making the determination; eliminates the DEMHS responsibility under the original bill to make determinations for some executive branch agency records; and makes some technical changes.

EFFECTIVE DATE: October 1, 2007

BACKGROUND

Safety Risk

Under existing law, "safety risk" includes the risk of harm to anyone or any government-owned or -leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, them. Government-owned or -leased institution or facility includes facilities owned or leased by a public service company, certified telecommunications provider, water company, or municipal utility that furnishes electric gas or water service. It does not include an institution or facility owned or leased by the federal government.

Records exempt from disclosure when there are reasonable grounds to believe disclosure may result in a safety risk include:

1. security manuals or reports;
2. engineering and architectural drawings of government-owned or -leased institutions or facilities;
3. operational specifications of security systems used at any

government-owned or -leased institution or facility, except for a general description and quality and cost of the system;

4. training manuals prepared for government-owned or -leased institutions or facilities that describe security procedures, emergency plans, or security equipment; and
5. internal security audits of government-owned or -leased institutions or facilities.

COMMITTEE ACTION

Public Safety and Security Committee

Joint Favorable Change of Reference

Yea 20 Nay 0 (03/01/2007)

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 13 Nay 0 (03/30/2007)